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PETER A. HAAS, ESQUIRE
1929 SW 13TH AVENUE
PORTLAND, OR 97201

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OFFICE OF PETITIONS

In re Application of
Ognjen Amidzic
Application No. 10/519,299
Filed: February 11, 2005
Attorney Docket No. None

ON PETITION

This is a decision on the petition filed December 29, 2008, which is being treated under the unintentional provisions of 37 CFR 1.137(b), to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of April 7, 2008. No extensions of time pursuant to the provisions of 37 CFR 1.136(a) were timely obtained. Accordingly, the date of abandonment of this application is July 8, 2008. It is noted that a Request for Continued Examination (RCE) was filed on October 7, 2008; however, the RCE was held improper by a Notice mailed November 13, 2008. A Notice of Abandonment was mailed December 4, 2008. In response, on December 29, 2008, the present petition was filed.

37 CFR 1.137(b)(3) requires a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional." Since the statement appearing in the petition varies from the language required by 37 CFR 1.137(b)(3), the statement is being construed as the required statement. Petitioner must notify the Office if this is **not** a correct reading of the statement appearing in the petition.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of \$405, (2) the petition fee of \$810, and (3) an adequate statement of unintentional delay.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Since the \$555 extension of time fee submitted with the petition on December 29, 2008 was subsequent to the maximum extendable period for reply, petitioner may request a refund of this fee by writing to the following address: Mail Stop 16, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450. A copy of this decision should accompany petitioner's request.

Telephone inquiries concerning this decision should be directed to Alicia Kelley at (571) 272-6059.

This application is being referred to Technology Center AU 3736 for appropriate action by the Examiner in the normal course of business of the RCE in accordance with 37 CFR 1.114.

/SDB/

Sherry D. Brinkley
Petitions Examiner
Office of Petitions